

Enclosure B

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Bureau of Indian Education's (BIE) Federal Fiscal Year (FFY) 2010 grant award under Part B of the IDEA. OSEP is imposing these Special Conditions because of the BIE's failure to complete all of the corrective actions contained in Section C of the Program Improvement and Accountability Plan (PIAP). The objective of Section C of the PIAP is to ensure the BIE provides a free appropriate public education (FAPE) to all eligible students in all BIE-funded schools.

In response to serious concerns raised in 2005 by the U.S. Department of Education (Department) concerning the BIE's administration of Elementary and Secondary Education Act (ESEA) and IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP is Interior's plan for meeting the statutory requirements set forth in ESEA and IDEA for properly managing Federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that ESEA and IDEA have established. The BIE has been submitting quarterly reports to the Department on its progress in implementing the PIAP, and the BIE and the Department have been meeting quarterly to discuss the BIE's progress in implementing the PIAP's corrective actions.

Because of the lack of satisfactory progress implementing the PIAP, the Department placed special conditions on Interior's receipt of all FFY 2007 and FFY 2008 ESEA and IDEA funds the Department provided to Interior. As part of the special conditions, the Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of ESEA and IDEA. In FFY 2009, OSEP imposed program specific special conditions on the grant award under Part B of the IDEA, because the BIE had not completed all of the corrective actions contained in Section C of the 2008-2009 PIAP. At this time, the BIE has not documented completion of all of the corrective actions contained in Section C of the 2009-2010 PIAP. Specifically, the BIE has not been able to demonstrate that 100% of the findings of noncompliance are corrected within one year of identification (*Milestone C.4.1.4*); that schools write and implement corrective action plans that ensure correction of findings of noncompliance within one year of identification (*Milestone C.4.1.5*); or that the BIE creates and implements sanctions for schools not implementing corrective action plans (*Subtask C.4.2.1*). Therefore, the BIE has not demonstrated full compliance with the requirements in IDEA sections 611(h)(2)(A) and (F), 612(a)(11) and 616; 34 CFR §§300.149, 300.600, 300.708 and 300.716; 20 U.S.C. 1232d(b)(3)(E); and OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02), to ensure timely correction of noncompliance.

2. Nature of the Special Conditions

Based on its review of the BIE's quarterly report on Section C of the PIAP for the quarter ending March 31, 2010, OSEP has determined that it is necessary to impose the following special conditions.

A. Final Report on Section C of the 2009-2010 PIAP: The BIE must submit to the Department by July 31, 2010, its final report on Section C of the PIAP for the 2009-2010 school year. This report covers April 1, 2010 through June 30, 2010. The report must contain (a) the status of each task and subtask scheduled to be completed, (b) the BIE's supporting documentation regarding completion of these subtasks, including explanation of delays for all subtasks and expected completion dates for all unimplemented actions, and (c) other data or documentation as the Department may request in order to verify the completion of tasks and subtasks.

B. Revisions to Section C of the 2010-2011 PIAP: The BIE is no longer required to report to the Department on the following tasks, sub-tasks and milestones:

Task C.5 (inclusive of Subtask C.5.1 and Milestones C.5.1.1-C.5.1.3): Complete Coordinated Service Plan. The BIE completed the Coordinated Service Plan and provided training on the Plan. The BIE is no longer required to report to the Department on these tasks and milestones in the PIAP.

C. Continued Implementation of Section C of the PIAP and 2010-2011 Reporting Requirements:

Continued Implementation: The BIE must continue to implement Section C of the PIAP for the summer term of 2010 and school year 2010-2011 until all corrective actions have been implemented. To ensure progress, the BIE must provide the Department with quarterly progress reports, which will be due to the Department 30 days after the end of each quarter. Each quarterly report will contain:

- (a) a description of activities and progress for each subtask during the reporting period;
- (b) the status of each subtask scheduled to be completed during the reporting period along with specific completion dates for all tasks, subtasks, and key milestones;
- (c) supporting documentation regarding completion of the subtasks, including explanation of delays for all subtasks and expected completion dates for all unimplemented actions;
- (d) updates to ensure that progress for previously completed tasks and subtasks is sustained; and
- (e) other data or documentation as the Department may request in order to verify the completion of tasks and subtasks.

Required Documentation to Verify Completion of Certain Milestones: In addition to the reporting requirements listed above, in order to demonstrate completion of the following milestones in Section C of the PIAP, the BIE must include the following information and/or documentation:

Milestone C.4.1.4: BIE will ensure 100% of findings of noncompliance are corrected within one year of identification. OSEP's June 3, 2010 FFY 2008

SPP/APR Response Table requires the BIE to demonstrate, in the FFY 2009 APR, due February 1, 2011, that the BIE has corrected the remaining 14 findings of noncompliance identified in FFY 2007 and the remaining eight findings of noncompliance identified in FFY 2006 that were not reported as corrected in the FFY 2008 APR. The Response Table further requires the BIE to review its improvement activities and revise them, if appropriate, to ensure they will enable the BIE to provide data in the FFY 2009 APR, due February 1, 2011, demonstrating that the BIE timely corrected noncompliance identified by the BIE in FFY 2008, in accordance with 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600(e) and OSEP Memo 09-02. In reporting on this milestone, the BIE must provide the following information:

- (a) In the fourth quarterly report for the 2009-2010 PIAP, due July 31, 2010, the BIE must provide updated data on the status of correction of 14 findings of noncompliance identified in FFY 2007 and the eight findings of noncompliance identified in FFY 2006 that the BIE reported were not corrected under Indicator 15 in the FFY 2008 APR. The BIE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance.
- (b) In the first quarterly report for the 2010-2011 PIAP, due October 31, 2010, the BIE must provide updated data on the status of correction on any of the 14 findings of noncompliance identified in FFY 2007 and the eight findings of noncompliance identified in FFY 2006 that the BIE reported were not corrected under Indicator 15 in the FFY 2008 APR, and were not reported as corrected in the fourth quarterly report for the 2009-2010 PIAP, submitted on July 31, 2010. The BIE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance.
- (c) In lieu of reporting in the second quarterly report for the 2010-2011 PIAP, due January 31, 2011, the BIE must report in the FFY 2009 APR, due February 1, 2011, as required in the FFY 2008 SPP/APR Response Table under Indicator 15. In its response to Indicator 15, the BIE must:
 - (i) provide information from the fourth quarterly report for the 2009-2010 PIAP and the first quarterly report for the 2010-2011 PIAP and updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2007 and FFY 2006, including the actions the BIE has taken to address the uncorrected noncompliance;
 - (ii) report the number of findings of noncompliance identified through all components of the BIE's general supervision system in FFY 2008 and the number and percent of corrections completed as soon as possible but in no case later than one year from identification. For any findings of noncompliance not corrected within one year of identification, the BIE must include a description of the actions, including technical assistance and enforcement actions, taken to

address the noncompliance and the status of correction. In reporting on the correction of noncompliance, the BIE must report that it has verified that each school with noncompliance identified in FFY 2008: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the school, consistent with OSEP Memo 09-02.

(iii) submit all of the documentation required under General Supervision Critical Elements 1 and 2 in OSEP's May 26, 2010 verification letter and enclosure, including that the BIE: (1) has clarified which document constitutes the written notification from the BIE to the school of the noncompliance so it is clear when the one-year timeline for correction begins; (2) uses data it receives through the Special Education School Summary (SESS), the Indian School Equalization Program (ISEP) verification process, its database, and due process decisions to identify findings of noncompliance; (3) explicitly informs a school that noncompliance with any requirement of Part B of the IDEA, including a requirement not related to FAPE, must be corrected as soon as possible, and in no case later than one year from the State's identification of the noncompliance; (4) has revised its written policies and procedures for verifying that previously identified noncompliance has been corrected to include procedures for: (a) reviewing updated data such as data from subsequent on-site monitoring or data collected through the data system to ensure the school is correctly implementing the specific regulatory requirements; (b) determining the root cause of the noncompliance; and (c) if needed, changing, or requiring a school to change its policies, procedures and/or practices that contributed to or resulted in the noncompliance; and (5) ensures that findings of noncompliance identified through the SESS, ISEP verification process, database, and due process decisions are corrected in a manner consistent with OSEP's Sept. 3, 2008 FAQs and OSEP Memo 09-02; and

(iv) address all issues identified in OSEP's June 3, 2010 response to the BIE's FFY 2008 APR submission related to Indicator 15 and this Special Condition.

(d) In the third quarterly report for the 2010-2011 PIAP, due April 30, 2011, the BIE must provide updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2008, FFY 2007 and FFY 2006, including the actions the State has taken to address the uncorrected noncompliance.

Milestone C.4.1.5: Sanctions applied if school fails to write and implement corrective action plans:

- (a) In the fourth quarterly report for the 2009-2010 PIAP, which covers April 1, 2010 through June 30, 2010 and is due July 31, 2010, the BIE must provide the policies and/or procedures it has developed to ensure subsequent correction when schools are unable to correct findings of noncompliance in a timely manner, including follow up visits, technical assistance, enforcement actions and/or sanctions. The BIE must also report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.
- (b) In the first quarterly report for the 2010-2011 PIAP, which covers July 1, 2010 through September 30, 2010 and is due October 31, 2010, the BIE must report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.
- (c) In the second quarterly report for the 2010-2011 PIAP, which covers October 1, 2010 through December 31, 2010 and is due January 31, 2011, the BIE must report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.
- (d) In the third quarterly report for the 2010-2011 PIAP, which covers January 1, 2011 through March 31, 2011 and is due April 30, 2011, the BIE must report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, the BIE provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require the BIE to submit data demonstrating compliance with the requirements in IDEA sections 611(h)(2)(A) and (F), 612(a)(11) and 616; 34 CFR §§300.149, 300.600, 300.708 and 300. 716; 20 U.S.C. 1232d(b)(3)(E); and OSEP Memo 09-02 to ensure timely correction of noncompliance.

4. Method of Requesting Reconsideration

The BIE can write to OSEP's Acting Director, Dr. Alexa Posny, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the BIE and the reasons for those requested changes.

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Alexa Posny
400 Maryland Avenue, SW
Washington DC 20202-2500

5. Submission of Reports

The BIE must submit all reports required under the Special Conditions. The quarterly reports for Section C of the PIAP should be submitted to:

Matthew Schneer
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12th Street, SW, Room 4035
Washington, DC 20202

and

Susan Benbow
Risk Management Service
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, Room 7E208
Washington, DC 20202